



Doc Code: AP.PRE.REQ

PTO/SB/33 (07-05)

Approved for use through xx/xx/200x. OMB 0651-00xx

U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

## PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)

31083.05US2

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)]

on SEPTEMBER 21, 2005Signature Ranni MatarTyped or printed name RANNI MATAR

Application Number

09/867,174

Filed

5/29/01

First Named Inventor

ROBERT H. SCHEER

Art Unit

3625

Examiner

GARG, YOGESH C.

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

☐ applicant/inventor.☐ assignee of record of the entire interest.  
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.  
(Form PTO/SB/96)☒ attorney or agent of record. 35,906  
Registration number☐ attorney or agent acting under 37 CFR 1.34.  
Registration number if acting under 37 CFR 1.34

GARY R. JAROSIK  
Signature  
Typed or printed name

(312) 456-8449  
Telephone number

SEPTEMBER 21, 2005  
Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below\*.

☐ \*Total of \_\_\_\_\_ forms are submitted.

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.



## REASONS FOR REVIEW REQUEST

In the application claims 11-20 remain pending. Claims 1-10 have been canceled without prejudice. No claims presently stand allowed. The reconsideration of the rejection of the claims is, however, respectfully requested.

Claims 11-20 stand rejected under 35 U.S.C. § 103 as being rendered obvious primarily by Altendahl (U.S. Patent No. 6,571,213) as modified by Landvater (U.S. Patent No. 6,609,101). It is respectfully submitted Landvater fails to disclose those claim elements that are plainly missing from Altendahl and, absent this required disclosure, it cannot be said that Landvater suggests the modification of Altendahl to arrive at the invention claimed. For at least this reason it is respectfully submitted that a *prima facie* case of obviousness has not been presented and the rejection of the claims under 35 U.S.C. § 103 must be withdrawn.

The claimed invention is directed to a computer readable media having instructions for selecting a fulfillment plan used to position an item that is the subject of an order within a supply chain distributed over a plurality of geographic locations. To this end the instructions, among other things, function to construct a plurality of alternative fulfillment plans for moving the item that is the subject of the order from a sourcing point to each of a plurality of geographic locations within the supply chain, evaluate each of the constructed plurality of alternative fulfillment plans against a predetermined criteria, and then select for implementation one of the constructed plurality of alternative fulfillment plans to thereby position the item that is the subject of the order at one of the plurality of geographic locations within the supply chain to thereby make the item available for use in meeting the order. In keeping with the plain language of the invention claimed, the geographic location in which the item that is the subject of the order is to be positioned is not selected, i.e., is not known, until after the instructions evaluate each of the constructed alternative fulfillment plans against the predetermined criteria.

Considering now Altendahl, within Altendahl a single, geographic destination for an item is required to be first established, i.e., the destination location is required to be predetermined. After the single, geographic destination is established, the system of Altendahl then merely functions to use various criteria to select a “route,” defined within Altendahl to be a parcel carrier (e.g., UPS) and parcel carrier service (e.g., ground or air), to position the item at the predetermined geographic destination, e.g., Chicago. (Col. 4, lines 17-32). It is therefore plainly seen that Altendahl fails to disclose, teach, or suggest at least the claimed elements of constructing a plurality of alternative fulfillment plans for moving an item that is the subject of an order from a sourcing point *to each of plural geographic locations* within the supply chain, evaluating each of the constructed plurality of alternative fulfillment plans against a predetermined criteria, *and then selecting* for implementation one of the constructed plurality of alternative fulfillment plans that most closely meets the predetermined criteria to thereby position the item that is the subject of the order *at one of the plural geographic locations* within the supply chain to thereby make the item available to meet the order. Thus it is plainly seen that, contrary to the position taken in the Advisory Action of September 13, 2005, Altendahl does not “anticipate all of the limitations of claim 11 except the teaching that the item is to be moved to a plurality of geographic locations instead of one location.” Rather, Altendahl discloses a system which, at its very core, is fundamentally different than the invention set forth in the claims, i.e., in Altendahl the system requires the selection of the geographic location in which an item is to be positioned prior to the determination of a “route” whereas, in the invention claimed, the geographic location in which the item that is the subject of the order is to be positioned is not selected until after the instructions evaluate each of the constructed alternative fulfillment plans against the predetermined criteria.

Turning now to Landvater, Landvater discloses a system that is used to forecast replenishment needs at select, predetermined locations, i.e., retail stores. More particularly, in Landvater a forecasting methodology is used to determine the amount of items to ship to each of the predetermined locations as well as when to ship the items to each of the predetermined locations. In this manner, at a forecasted time and in a forecasted amount items may be positioned at the predetermined locations to meet anticipated needs for the items. (Col. 8, lines 26-47).

From the foregoing it will be appreciated that, since Landvater discloses a system in which the replenishment needs of select predetermined locations are forecast to thereby allow replenishment shipments to be made directly to each of the predetermined locations, the system of Landvater, like Atenhahl, fails to disclose, teach, or suggest the claimed constructing of a plurality of alternative fulfillment plans for moving an item that is the subject of an order from a sourcing point to each of plural geographic locations within the supply chain, evaluating each of the constructed plurality of alternative fulfillment plans against a predetermined criteria, and then selecting for implementation one of the constructed plurality of alternative fulfillment plans that most closely meets the predetermined criteria to thereby position the item that is the subject of the order at one of the plural geographic locations within the supply chain to thereby make the item available to meet the order. Rather, in Landvater, like Altendahl, the destination location is required to be established prior to the performance of any further actions, namely, the forecasting of the amount of items to ship and when to ship the items. Thus, Landvater, like Altendahl, is in direct contrast to the invention claimed wherein the geographic location in which the item that is the subject of the order is to be positioned is not selected until after the instructions evaluate each of the constructed alternative fulfillment plans against the predetermined criteria. Accordingly, it

cannot be said that Landvater discloses, teaches, or suggests those claim elements that are plainly missing from Altendahl.

In sum, it is respectfully submitted that the mere disclosure within Landvater of plural destination locations, i.e., retail stores, to which items are to be shipped cannot be said to evidence that that an artisan of ordinary skill in the art at the time of the invention, with no knowledge of the claimed invention, would have been motivated to modify Altendahl to arrive at the invention claimed. Rather, since Landvater fails to disclose, teach, or suggest the very claim elements that are plainly missing from Altendahl, it is apparent that the suggestion for modifying Altendahl in the manner advanced in the rejection of the claims could only have been arrived at from hindsight knowledge impermissibly derived from the disclosure of the subject application. Therefore, for at least the reason that the application of Landvater cannot be said cure the shortcomings of Altendahl, it is respectfully submitted that a *prima facie* case of obviousness has not been presented and the rejection under 35 U.S.C. § 103 must be withdrawn.